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THE

AMERICAN LAW REGISTER.

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MARCH, 1861.  
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“MY RECOLLECTIONS OF THE CIRCUIT.”¹

I have been requested by the committee of your Literary Institution to take part in the lectures usually delivered in the course of the year in this room, and I have not unwillingly complied with their request ; with no expectation, indeed, that I should communicate any great amount of scientific knowledge to you in the course of a single lecture, but trusting that I might, at all events, by drawing on a long experience and a tolerably accurate recollection, tell what might serve for an even-

¹ A lecture delivered at the Autumnal Session of the Exeter Literary Society, on the evening of Wednesday, the 28th day of September, 1859, by the Right Hon'ble Sir John Taylor Coleridge, D. C. P. This interesting sketch has been handed to us by a professional friend who was in possession of an English copy. The unpretending simplicity and freshness with which it is written will commend it to the reader. We are also furnished from the same source with the following brief notice of the distinguished author, taken from a late English publication.—Eds. AM. L. REG.

The Right Honorable Sir John Taylor Coleridge, late one of the judges of the Court of Queen's Bench, who is the second son of James Coleridge, Esq., of Heath's Court, Ottery St. Mary, and nephew of the celebrated poet, was born at Tiverton, Devon, on the 9th of July, 1790. He was educated at Ottery St. Mary, and at Eton, and was elected a scholar of Corpus Christi College, Oxford. He became a Fellow of Exeter College ; won the Latin Verse Prize in 1810 ; was placed alone in the first class in classics, in 1812 ; and in 1813 won both the English and the Latin Prize Essay of the year.

In 1818, Mr. Coleridge married Mary, daughter of the Rev. Dr. Buchanan, Rector of Woodmansterne, Surrey.

On the 10th June, 1819, Mr. Coleridge was called to the bar at the Middle Temple, and thenceforth went the western circuit, which, during his practice, was attended by Sir Thomas Wilde, afterwards Lord Chancellor Truro, Sir William Follett, and the present Chief Justice Erle, and Mr. Justice Crowder. During his practice at the bar, Mr. Coleridge acquired repute in leading literary circles, so much, indeed, that on the death of Giffard, in 1823, he was selected to edit the “Quarterly Review,” until the appointment of Lockhart, in 1824 ; and we believe he has since been an occasional contributor to its pages. In 1825, he published an edition of “Blackstone's Commentaries,” with annotations by himself. In 1832, he was appointed Recorder of Exeter, and became serjeant-at-law ; and during the administration of Sir Robert Peel, in 1835, he was appointed one of the judges of the King's Bench, receiving the customary honor of knighthood.

Sir John retired from the Court of Queen's Bench in June, 1858, and was sworn a member of the Privy Council, since which time he has regularly attended the judicial committee. About the same time, he was appointed on the Royal Education Commission, and also on the commission for the concentration of the Law Courts. Sir John had previously been appointed, by Parliament, in 1854, one of the Oxford University Commissioners.

ing's innocent amusement, of persons, many of whom have passed away and things changed and changing, and which even in their present condition are little known by the public in general. I may add, too, with truth, that I am sincerely desirous of doing anything in my power to serve or gratify the inhabitants of this city, with which I have been familiar from my childhood, with which I once had a close and important connection, and of whose ancient and loyal corporation I still remember with pride and pleasure that I am a member. I have announced as my subject, "My Recollections of the Circuit." Perhaps the circuit, more than any other part of a lawyer's career, presents matter of popular interest. It is that which brings the law more intelligibly and vividly into operation before the eyes of the people than any other part of its whole machinery, and whether as regards the barrister or the judge, the recollections of it will be more personal. Let me explain what I mean by this, and I am desirous of doing so to avoid misconstruction. Although now retired from the profession I do not feel that I have acquired any larger limit in disclosing what I have taken part in, or been witness to, than if I were still a member of the Queen's Bench. What I could not properly disclose then, I must still abstain from talking about now in mixed company. I am sure you would not desire me to break through so obvious and imperative a limitation. But there need never be any reserve as to the personal experience and recollection of the barrister or judge in respect of things which he sees passing before him publicly on the circuit. He will not have to reveal any matter which might impair the authority of judgments or be painful to the feelings of survivors—all which, of course, have their seal set upon them. My honored friend, the late Mr. Justice Park, used to fancy that the origin of the circuit might be found in Holy Writ, in the example of Samuel, of whom it is recorded that "he went from year to year in circuit to Bethel and Gilgal and Mizpah, and judged Israel in all those places, and his return was to Ramah, for there was his house and there he judged Israel." Josephus makes the parallel still more close, because he states, in his *Antiquities*, that Samuel made his circuit through the cities twice every year.'

This is certainly a case in point, and may be the first example. But we need hardly go so high or so far for authority. Wherever the territory of a State extends to any considerable distance from the seat of government, it is among the most obvious and early suggestions of civil polity to remedy in some way the inconvenience of compelling all complainants, and all litigant parties, witnesses, and others, to resort for the administration of justice to the centre—in the popular phrase, to bring justice home to the door of the subject, must be in theory, with proper limitations and safeguards, always desirable; and in this country where the institution of the jury in some form—rude indeed, and with somewhat different attributes from those of the present jury—was in force from a very early period, there was an additional reason. Originally, as perhaps you know, the jurymen repaired to London, or wherever the Court sat; and the cause was tried—as causes of importance still occasionally are—at the bar of the Court and before all the judges of it. The manifest inconvenience of this, and the necessity for trying some causes on the spot, gave early rise to the periodical visits of judges commissioned for the purpose of trying disputed facts; and so by degrees, which I need not stop to explain to you, to the circuits as at present constituted.

You need not be afraid that I am going to weary you with legal antiquities, or make the absurd attempt to teach you the law even on any one point, however narrow, in a single lecture; and yet I must ask you for a moment to consider the peculiarly good fortune of our country in this respect. It is sufficiently large, and its interests are sufficiently varied to give to the administration of the law importance, breadth, freedom from the ill influences of local and personal prejudices and passions. At the same time, it is not so large but that a very moderate number of superior judges are sufficient both to transact the common business and decide the strictly legal questions of law from time to time arising; and also to divide the country among themselves for the holding the assizes and disposing of questions of fact in the several counties. For both purposes fifteen individuals suffice.

Their elevated position, their usual residence in London, and their practice of varying their choice of circuits, effectually remove

them from local influences; while nothing can be so favorable to the preservation of general uniformity of decisions as the fact, that they have been trained in one school—that they go out from one centre, at which they ordinarily expound the law—are in constant intercourse with each other—that they return to that centre after each circuit—and are liable to have their decisions, while out, canvassed and re-considered by their Courts. In a larger kingdom, as in France, this cannot be. There must be—and there are—several independent centres not bound by the decisions each of the other.

I have mentioned the elevated position of the judges, and in this too, I think, we are fortunate. It is well that it should be raised as it is, for it ensures in general the promotion of eminent men. It would be attended with bad consequences, in my opinion, if it were raised higher. In the administration of justice it is of immense importance that the judge should be treated with deference by those who practise before him, but it is also important that they should approach him and deal with him with perfect though respectful freedom. Nothing is so remarkable, I think,—and few things so useful,—as the happy mixture of deference and freedom which is apparent in the intercourse of the judge and the bar who practice before him. His opinion on legal questions must for the time necessarily prevail, but this is always on the understanding that it may be questioned hereafter. And in the meantime no one hesitates to press his own view freely, and to make it morally certain that the judge shall not, through haste or carelessness, be ignorant of the point on which the counsel intends hereafter to rely. Thus business proceeds at the time, but subject to more deliberate review thereafter.

Many things—railways especially—have materially changed the circuit since I first joined it. Then we assembled usually in nearly our full number, at Winchester, and continued together till the close in Somersetshire. Our number somewhat diminished in Cornwall. The facilities which railways afford make the attendance somewhat less regular, and in consequence the moral influence of the body on its members is much diminished. We met usually in high spirits, and there was much excitement on the whole round. Those who were in full business were not the least merry or regular

at the circuit mess. There were the aspirants, men who were beginning to rise into notice—full of hope and interest. There were the very young men—young at least according to legal calculation, for whom the novelty of the life and the business in court were in themselves a continual treat, who found in watching the proceedings, or the displays of eloquence and skill in the leaders, or of learning in the juniors both instruction and amusement—to whom the mere novelty and strangeness of the whole scene around them were pleasure enough. True, there were necessarily some few who were growing old in heartless disappointment—some whose hearts were sick with hopes again and again deferred,—and when to this was added—as was sometimes the case—the thought of a wife and children at home, dependent upon the husband's success in his profession—or the pressure of means so scanty, that the candidate might soon be compelled to abandon the struggle altogether from inability to meet its expenses, it cannot be denied that there were elements of sadness to qualify the apparent general lightheartedness of our body. But it must be said that trials such as these—among the severest, perhaps, to which men can be exposed—were in general gallantly borne; and the feelings of disappointment, anxiety, or distress so nobly concealed, that to the many they were unknown. The few sympathized with the sufferers, and rendered whatever comfort, kindness, and encouragement could afford—and not a little was done by the successful men in this way as opportunity afforded.

Our circuit, in respect of the country we traveled over, was very interesting. Besides the character of the towns themselves, and the beauty of the direct routes from place to place, at every point there were off-lying objects and places to which we wandered as time and leisure allowed, in small parties. The Isle of Wight, Weymouth, Lyme, Sidmouth, and Exmouth; Plymouth by one route into Cornwall, or the Moor and Tavistock by another—the north coast of the two counties—the Quantock and Cheddar, all these, in turn, a circuiter might hope to visit in the course of this or that circuit. I have alluded to the expense. This was certainly to not a few a serious inconvenience. Indeed, it was not untruly considered that

the whole body of circuiters spent in the several counties more than the whole body received in them.

“Our circuit” was a somewhat stately affair. The judges did not post, but traveled with sober haste, drawn by their own four in hand. The barristers posted or rode. It was an understood rule not to travel from place to place in any public conveyance. The “leaders” always had their private carriages, and some of them their saddle horses also. Our mess was rather an expensive one, and we had our own cellar of wine at each circuit town. This was under the care of our “wine treasurer,” and a van, with four horses, attended us, under the superintendence of our baggage master. These were our two circuit officers: two of our own number upon whose arrangements we depended much for our comforts, and to whom we looked on our “Grand day,” which we always kept at Dorchester, not merely for an account of their own departments, but also for the formal introduction of new members, and an account generally given with much point and humor, of preferments, promotions, marriage, and any other incidents which might have befallen any of the members since the last circuit—“offences” these, as we called them, always expiated by contributions to the “wine fund.” The leader of the circuit was the barrister highest in rank. He was expected to be a frequent attendant at the mess. To him application was first made in disputed points of professional etiquette, and he was expected to watch over the interest, character, and conduct of the circuit. Graver cases were reserved for the consideration of the whole body; our law was unwritten, and our decisions were neither recorded nor reported, but obeyed on peril of expulsion from the mess.

The judges, I have said, traveled with their own four horses. I may mention also as a little circumstance now passing in oblivion that they traveled with their own “four wigs also.” The brown scratch for the morning when not in court, the powdered dress-wig for dinner, the tye-wig with the black coif when sitting on the civil side of the court, the full bottomed one which was never omitted for the crown side. Those were days, you know, when gentlemen in common life wore coats of every color, but we always dined with the

judges in black. Some judges, indeed, were strict in their notions as to the dress of the bar at other times. I remember once, when a party of us halted at Blandford for luncheon, on our way from Salisbury to Dorchester, at the same inn at which their Lordships were resting for the same purpose. We strolled out while our repast was being prepared, and met them. One of our number had a black silk handkerchief round his neck and a blue cloth cap with a gold lace band on his head. We observed that one of the judges drew up at this. It chanced that a few minutes after a recruiting party marched down the street with drum and fife, and at our luncheon the butler appeared with a demure face to say, with his lordship's compliments to the gentlemen of the bar, that as some of them seemed to have a military turn, he sent to say that there was a recruiting party in the town, and they might like perhaps to take the opportunity of enlisting.

I cannot say the law was ever a hard mistress to me, and she did not allow me long to languish in idleness, nor ever suffer me to be without hope. But, of course, I had many idle days, and I was rather fond of note-taking as a very instructive practice, whenever the case was an interesting one; and I found great benefit from it when the facility of taking an accurate and full note rapidly became of the greatest importance in the course of my after life at the bar and on the bench. Let me now give you the substance of a note which I made at the Exeter Summer Assize of 1822, of a trial for murder. John Chapman was charged with the murder of his wife, by shooting her; and there was no doubt of the fact. The only question was whether the circumstances were such as amounted to murder or manslaughter only. It appeared that his wife, Sarah, was a handsome person, and that he was devotedly attached to her. They had been married about nine months. His behavior had been uniformly most affectionate. He was sober and industrious, and as one of the witnesses for the prosecution said, he made nine days' work in the week to provide for her comfort. But this affection was not returned. She became notoriously attached to a man named William Robinson. In the afternoon of the 20th of May, at a public-house, the three were present, with others in the same room,

and she went through the ceremony of a mock marriage with her paramour. She sat with her arm over his shoulder, and when her husband in tears expostulated with her, and offered her his forgiveness if she would but quit Robinson and return to him, she jeered at him and flung beer in his face. Then she rose up and called to Robinson to come with her, and they two went away together on the road. The unhappy husband after following them with entreaties and threats for some distance, turned round and ran furiously in an opposite direction, and before long returned with a gun in his hand, and calling to his wife, told her that he would shoot her unless she left Robinson and came with him. This he repeated several times. She only laughed at him. He levelled his piece, and she was a corpse before his eyes in an instant. It appeared that he had run nearly half a mile to the farm house where he labored, rushed to the corn chamber with which he was familiar, seized a gun which was kept there, leapt from a height of 14 feet to the ground, and in a seemingly frantic state retraced his steps, until he overtook his wife. There was no evidence that he had loaded the gun, no conclusive evidence that he knew it was loaded ; but it was proved that it had been left loaded in the place from which he took it, at the latter end of March, by another laborer who had used it in bird shooting. When the deed was done he seemed scarcely aware of its nature, and, on coming to himself, bitterly deplored the death which his own hand had caused. These were the facts. Nothing could be more simple ; scarcely any, I think you will agree with me, could be more affecting. The devoted husband who in a moment of passion, under maddening provocation, had taken the life of the heartless wanton, whom he loved only too fondly, now standing at the bar of justice in hazard of losing his own by an ignominious death for that act. I remember well how deep the impression was in a crowded court on all classes of people there assembled. But none felt it so deeply as the judge, and he was the object who most arrested my attention. Sir John Richardson was that judge. He never was a leader at the bar, and ill health drove him so soon from the bench, that many of you, perhaps, have never heard his name before. I knew him very little then, but in after life I had the privilege of knowing him well.

He was a thoroughly instructed lawyer, an accomplished scholar, and a man of the soundest judgment, a tender-hearted, God-fearing Christian. He entered with his whole soul into the fearful circumstances of the case. But he was there to do his duty, however painfully, and, as a lawyer, he knew that the provocation given could not excuse the act, if committed willfully and knowingly; and he, therefore, honestly told the jury that if they believed the story told by the witnesses, and that the prisoner "knowing the gun to be loaded," took it in his hand and set out in pursuit of his wife, with intent to shoot her and take her life, if he could not prevail upon her to come back with him, the act amounted to nothing less than "willful murder." The jury found the prisoner guilty of manslaughter; and I never shall forget the effect produced by the judge's sentence. He was a meagre man, very pale, with eyes brightened by the constraint he was putting on his feelings, and perhaps by the first approach of the complaint which prevented his ever going another circuit. His voice was hollow and broken, as amid the death-like silence of the court he told the unhappy man that he saw his misery, and desired not to add to the sorrows of a broken heart. But that the verdict might not be misunderstood and be mischievous to others, he must tell him that the jury could only have acted rightly on the belief that he had not intended at the time to commit the fatal act, and was not aware at the time that the gun was loaded. "The law," said he, "makes no allowance for the mere indulgence of passion. No man, no injured man, no injured husband, capable of receiving, and fearing to receive, the greatest of human injuries, has a right to take the law into his own hands and wreak his vengeance by taking away human life. Had the jury found themselves warranted in returning a verdict of willful murder, nothing could have interposed between you and an ignominious death." My record of this sentence will explain sufficiently why I have repeated this story to you. In practice our law of homicide has been administered with a greatly increased spirit of mercy since the days of Richardson, administered in practice by the jury, but it remains in truth unaltered; and it is well for every one to disabuse himself of the mischievous notion, if he entertains it, that merely

because he receives a great provocation, which puts him into a violent passion, and he thereupon avenges himself and kills the party provoking him, he is not to be considered in law a murderer.

Let me now pass to the other side of the court. No civil case, I think, interested me more than one tried in Cornwall, in the summer of 1821, by Mr. Justice Best, afterwards Chief Justice of the Common Pleas, and Lord Wynford. His part, however, in the trial was not a very conspicuous one, as it turned entirely upon facts, and the facts, though strange and complicated, came out at last, so overwhelmingly clear, that the jury relieved him from summing up. The story was this: There was, and still is, a highly respectable family in Cornwall, to which I shall give the name of Robinson. They had property in that county and this, but their residence was in Cornwall. The father, William, had two sons—William, the eldest—Nicholas, the younger—and two daughters. He settled his landed property upon William and his issue, mail—failing these on Nicholas and his issue male—and then on the two daughters, equally. William was to be the Squire, and Nicholas was placed with an eminent attorney, at St. Austell, as a clerk, and with some hope of being admitted into partnership, ultimately. The five years of clerkship were drawing to an end in the summer of 1782. He had conducted himself well, was a respectable, intelligent young man, and his master—who was an old friend of the family—was much attached to him. The harmony between the two, and between Nicholas and his family, was broken by the discovery that he had become attached to a young woman at St. Austell—a milliner or a milliner's apprentice. It was the subject of much dispute and distress. The Robinsons set their faces decidedly against the marriage. The master interposed, told him that if he formed that connection he must not hope to form any with him, and finally succeeded in procuring something like a promise from him that he would break off the engagement. He would be of standing to be admitted as an attorney in November, 1782, and, the family glad to get him out of the way, he was sent to London in August, to the London agent of the Cornish family. There he stayed and wrote letters—unhappy

letters—from time to time, to his friends, and among others to his old master. In November he was admitted attorney of the Courts of King's Bench and Common Pleas, and thenceforward he was no more seen or heard of by any member of his family or by any former friend. All search failed. No trace of him could be made out. Even love died out in the young milliner's breast, and she married the master of a trading vessel. In the course of time old Mr. Robinson died. William succeeded to the property, never married, and died in May, 1802. I mentioned that there were two sisters; their names, I think, were Elizabeth and Mary Ann. At the time of William's death they were both married to very respectable clergymen in this county. Twenty years had nearly elapsed since anything had been heard of Nicholas, who was now entitled to the property, if alive. They took possession, and for nearly twenty years more, no claim, whatever, was made to disturb their enjoyment.

But early in 1783, a young man, whose look and manner were above his means and station, made his appearance as a stranger at Liverpool. He called himself "Nathaniel Richardson." (You will observe the initials.) He procured a carriage and a pair of horses, and plied in the streets as a hackney coachman. He was civil and sober—prudent and prosperous. His hackney coach, after a short time, was converted into a diligence, which went to London, he horsing and driving it during certain stages. He married and had children. He gradually grew into a considerable proprietor, and bought and sold horses largely; until having gone into Wales, for the purpose of purchasing horses, in 1802, and returning in July of that year, he was drowned by an accident in the Mersey, just two months after the death, as you will remember, of William Robinson. And now, in 1821, it was said, that this Nathaniel Richardson was Nicholas Robinson, and his eldest son it was who claimed the property. How was this identity to be made out of Nicholas Robinson and Nathaniel Richardson? Nearly forty years had elapsed since any one had seen or heard of the former under that name. No witness could be produced who had seen the former in Cornwall and the latter at Liverpool,

and could say that they were the same persons. Yet it was made out, conclusively, and the case presented a remarkable instance of the evidential force of a vast number of small circumstances, all pointing to one conclusion, many of them of light weight, taken by themselves, yet all, when added together, compelling the mind's assent to the proposition for which they were adduced. The Cornish witnesses and the Liverpool witnesses agreed in their description of the person—his height, color of hair, eyes, general appearance and manner, some personal habits, such as biting his nails, fondness for horses and for driving—which made it probable that Nicholas would take up the line which Nathaniel was found to have adopted. The times were shown to agree, for the coachmaker, of whom he had the first carriage, was brought with his books to the trial, containing the entry of the purchase; and that Nathaniel was a stranger, when he was first seen at Liverpool, was curiously proved by the circumstance, that the waterman on the stand where he plied remembered his first appearance, and that he himself had mounted on the box by his desire to show him the way to the first place he was hired to drive to. He was proved to have mentioned to his wife that his father's name was William, and that he had a brother of the same name, and two sisters. It was remembered in Cornwall that Elizabeth had been the favorite sister of Nicholas; Nathaniel called his first daughter by that name, and she dying, he called the second by the same name; a third he called "Mary Ann." That he had made no claim on the property at his brother's death was sufficiently explained by his own death following so soon after, and that for some time, previously, he had been wandering in North Wales, from fair to fair and place to place, purchasing horses, and was very unlikely to have seen any newspaper recording a death in Cornwall. But all doubt was removed by another remarkable circumstance. Nathaniel's widow married again. Her furniture and effects of every kind were taken to her second husband's house. Among the articles was an old trunk, which he had always preserved with care, and which she had never seen opened. It chanced that curiosity was one day excited, and on opening it a

number of papers and letters and books of account were found. But for the most part they referred to a person of whom they had never heard, not "Nathaniel Richardson," but "Nicholas Robinson." Among the papers were the two admissions of Nicholas Robinson, as attorney in the Court of Queen's Bench and Common Pleas. There were also letters to him from persons in Cornwall. On the trial, his old master and other Cornish contemporaries proved the admitted handwriting of Richardson to be the handwriting of Robinson. And so the property was recovered.

For the aunts had appeared the most eminent leaders on the circuit, and the prejudices of a special jury were naturally in their favor. A young man, William Adam, then just rising to a lead, was for the heir-at-law. I never shall forget how, in his opening speech, he unfolded in the most beautiful order, and with every grace of language, pronunciation, voice, person, and manner, the facts which I have been compelled somewhat to huddle together. The little circumstance of nail-biting, I remember, he would not forego, yet he was puzzled how to deal with it, for the judge was, himself, a notorious nail-biter; and the mention of it, he seemed to suppose, might offend him. But he brought it in so as only to provoke a good-humored smile, and no offence was taken. The speech and the management of the case lifted him into the second place on the circuit, and he maintained himself in it until he was attracted to the committee business of the House of Commons; and, finally, was induced by delicate health to retire to the lucrative post of Accountant-General in Chancery. I was on several occasions his junior, and I owed much to his kindness, when it was of great value to me. It would have been of the greatest, if I could have learnt to imitate the various excellencies of his style and manner in speaking.

In January, 1832, the Corporation of Exeter did me the great honor of electing me as their Recorder. The power of election, as you know, has now passed from them, and the office is in the gift of the crown. But it is an office shorn of some of its power and pre-eminence. Exeter, with some few other of our more ancient cities, had very large criminal jurisdiction. The Recorder

tried every offence but treason and misprison of treason, and, except when there was such a charge, the justices of assize did not, in fact, interfere with his jurisdiction. It was my lot to try a remarkable case of a very serious nature. You have, all of you, heard, and some of you must remember, the first introduction of Asiatic cholera into this country. Its ravages were fearful. The faculty, in general, seemed wholly taken by surprise and confounded by it, and the alarm and horror which its appearance in any particular place spread there were excessive. At this crisis, it was reported one evening in Dawlish, that a man, who had come into town, and was lying in a bed, in a back part of one of the public houses, was dangerously ill of the dreaded disease. The story spread rapidly, scattering dismay wherever it went. Excessive fear is a selfish and cruel passion. The bed on which he lay was bought, and as he lay in it, he was lifted into a common open cart, too short for his person, so that his legs hung out, exposed, over the end. A man was induced for a good reward, with a bottle of brandy, to sit in front and drive him to Exeter, where he was said to be settled. By night the journey was performed; the poor man was deposited in the streets in St. Sidwell's, and there before morning he died. If the men of Dawlish had felt fear, the citizens of Exeter, you may be sure, felt both fear and indignation. Inquiries were made by the magistrates, and, finally, three gentlemen of station and unblemished character were believed to have been the authors of the proceeding. The grand jury found a bill against them for manslaughter, and they were arraigned before me, in the Guildhall. The evidence seemed to bring the facts home to the prisoners, but it was the duty of the prosecution to show that those facts had caused the poor man to die when he did die—that but for these he would not have died then. Now, at this time, the faculty were so new to the disorder, that the most opposite opinions were entertained as to the proper treatment. The wildest theories were started by some persons, and among others “the cold treatment,” as it was called, did not want its advocates. No treatment had been tried long enough to be either definitely approved or condemned. Three medical gentlemen

attended the trial, who were to hear the evidence, and then speak as to the cause of death. When these gentlemen were called, not one of them could say that he was at all clear, that the poor man would not have died exactly as soon if he had never been moved from the room in which he lay at Dawlish; or, in other words, no one would say that he felt at all clear that the prisoners had occasioned the death by the act of removal and exposure, which they said might have been purely indifferent in this respect. I, therefore, interposed, and told the jury the prosecution had failed, and that they must acquit the prisoners; for how could they assert, undoubtedly, upon their oaths, what the medical gentlemen, so much more competent on such a subject, were unable to affirm?

With hesitation, and certainly to the disappointment of the audience, the jury acquitted the prisoners; but the painful interest of the trial was not over. To the three gentlemen, this had been an agonizing day. They had stood for hours in the dock, conscious of the feelings of those around them, as the sad story in which they were said to be implicated, was detailed. It is fair to presume that they had long repented, bitterly, of the conduct into which their excessive alarm had led them. Their feelings were intensely excited, and when they found the prosecution suddenly and unexpectedly at an end, the revulsion of feeling was terrible. To one of the three it was overpowering. He was a post-captain in the navy, a tall, athletic man, of noble appearance and military bearing. Suddenly I saw his white teeth clenched and his frame convulsed, he uttered the most fearful shrieks, and threw his limbs about with great violence. It was not without extreme difficulty that he was overpowered, and removed into a room behind the court, where, for some time, his shrieks were still heard in the court. I fear that he never entirely recovered from the shock, and that for the remainder of the days he lived he was a broken man in health and spirits. He had a kind heart, and was active in all local charities, beloved in his own family, and respected by all who knew him. Overwhelming fear, more, perhaps, for his neighbors than himself, and that mysterious character which at the time invested the approaches of cholera with something peculiarly

appalling, had, it may be believed, for the moment, set him beside himself, and induced him to join in an act that, regarded by itself, certainly was most selfish and cruel.

In January, 1835, I was placed on the bench ; and soon after started on the Oxford Circuit, with the late Sir James Alan Park. It was not without some misgiving that I set out with him. I was conscious of being somewhat regardless of forms and ceremonies, and knew how much importance he attached to them. I was afraid that I might find him a difficult companion, or that he might find me an uncongenial one ; and the Judges on a circuit live so entirely as members of the same small family, that without an entire agreement, there is a chance of much discomfort. I did that good and kind-hearted man but little justice. He treated me with perfect respect and consummate kindness. He was always ready to help me, to take more than his share of the work, and I found him a most entertaining, lively, easy companion. The Oxford Circuit is, next to the Northern, the largest and the most laborious. It embraces eight counties, and as the junior judge, I had to dispose of the prisoners in Berkshire, Staffordshire, Herefordshire, and Gloucestershire. I had been accustomed only to what I must still think the softer natures of the Western counties. The amount and the savage character of the offences in Staffordshire made a deep impression on me. I seemed to feel a load off my mind, and that I was even in greater personal safety, when I drove out of the county. I find that I have the notes of the trials of no less than 281 prisoners on this circuit. To this you are to add the civil causes which I tried in the other four counties, and the business transacted in the Judge's lodgings, with the official correspondence which necessarily followed on this work in court ; and you will have some idea of the labor imposed on an inexperienced judge on his first circuit. I say nothing of the anxiety in the case of the graver offences.

In the spring of 1840, I traveled the Northern Circuit with Mr. Justice Erskine. It was the circuit which followed the Sheffield treasonable outbreaks and the Chartist demonstrations through the North. But, as I was the senior judge, it was not my duty to

deliver the Castle jail at York. My colleague was nearly overdone by the labor and anxiety of that very heavy duty. He was assisted as is usual, but at the end he was obliged to rest a day or two, and I went on alone to Lancaster. My turn was at Newcastle and Liverpool, and I find notes of the trials of 185 prisoners there. Those were anxious times—happily now passed by—and I hope I do not deceive myself when I think that some small share in the pacification of men's minds, at the time, may have been attributable to the perfectly dispassionate and fair administration of justice upon these trials. Of course, I say this not boastingly. The same remarks would have applied equally whoever had been the judges.

I tried the somewhat famous Fergus O'Connor, at York, and Bronterre O'Brien, both at Newcastle and Liverpool. The first trial on which he was acquitted I shall not easily forget. The court is a large one—a deep oblong—with a most capacious gallery reaching to the ground, and filling up full half of it. I don't remember that a woman was to be seen in court, but this gallery was entirely filled by dark, stalwart pitmen or miners, who seemed to have us entirely in their power, and not to want the will for an outbreak. We were obliged to sit on to a late hour by candle-light, when it is always most difficult to preserve order in court. Men's minds, however, were too much excited and interested in what was going on, to be noisy. O'Brien, who is, I believe, still alive, made a very eloquent, very amusing, very exciting and mischievous speech in his defence. He had, however, a very unfavorable jury; for the Chartists had contrived to frighten those who had anything to lose, and none, in general, were more opposed to them than the shopkeepers, tradesmen, and small farmers. But I thought him, on the evidence, entitled to an acquittal, and acquitted he was. I must say that the Chartists I had to deal with interested me a good deal. For the most part they appeared to be honest and misled enthusiasts. I have no doubt that had they not been repressed, they would have been led on to plunder and havock, and that blood might have flowed like water; for their occupation made them a hard-handed, stern race. But they begun

intending to be loyal to the Queen, whom they strongly distinguished in their feelings from the Lords and Commons, and only to vindicate to themselves what they thought labor entitled them to. A large number defended themselves. Their broad Lancashire pronunciation you would have found it as difficult to understand as strangers find it difficult to understand us; but they spoke pure English, with some old and good provincial words, and in correct grammar; and they quoted, some of them largely—not from “Tom Paine,” or low books, infidel or seditious—but from Algernon Sydney, Sir William Jones, John Locke, and John Milton. There were men among them who, after a day’s work of fourteen or sixteen hours, had been diligent readers by the midnight lamp, and were better English scholars than many of their jurymen. It is usual in such cases, when the Government has succeeded in convicting the ringleaders, and a sufficient number to produce the effect of example, to deal gently with the remainder, and to release them, on pleading guilty, without punishment. O’Brien and others had been convicted, and the Attorney-General, for the County Palatine, was taking this course, but had passed over a mere lad, whose name was “Walter Scott.” Seeing his age, I said, “Oh, Mr. Attorney, surely you will not press upon Walter Scott, for his great name sake.” My suggestion was instantly yielded to. The boy was called up, and I explained to him the lenient course proposed to be taken towards him. He was very indignant, and insisted on being tried. He had evidently come prepared to enact the martyr to his cause, and it took some time, and the interposition of his friends, before he could be persuaded to accept the proffered grace.

It is time that I should have done; but before I release you I wish to refer to my first circuit, for the sake of one sad case at Gloucester. It is that of Edwin Jeffery, a lad in the employ of a butcher in a village near Stow-on-the-Wold, who was tried, convicted, and suffered for the murder of François Jacques Reus. This poor Frenchman had for some time lived on his small means, lodging at the house of a Mrs. Roper, in the village. He was unfortunately the possessor of a gold repeating watch, a gold chain, and two gold

seals, which he was somewhat too fond of displaying. On the evening of the 10th of March, 1834, he left his lodgings for a stroll, about half-past seven o'clock, saying he should return to his tea at eight. About eight he was brought back in a wheelbarrow, a dying man, bleeding; his skull shockingly fractured, his watch missing, but not his purse. The lad Jeffery was one of those who assisted in bringing him home. It appeared that he had been found on the ground groaning, in a lane just out of the village. No suspicion at first pointed to any one as guilty, but very soon after two strangers, who could give little account of themselves, were taken up. A number of witnesses were examined against them, and they were committed for trial. One circumstance was thought to press against them. One had a somewhat remarkable stick. The end of this was applied to a large dint in the deceased's skull, and was said exactly to fit it. The case was for trial at the summer assize for 1834. My friend, the late Mr. Justice Williams, was the judge; a man of excellent common sense. He read the depositions, thought they made out nothing but a slight and dangerous suspicion, told the grand jury so, and the bill was thrown out. By the following spring it was clear that he was right, and the two prisoners perfectly innocent. Partly by the evidence, and partly by the lad Jeffery's confession, the following facts appeared: He had seen the Frenchman's watch, who had perhaps shown it to him, and let him hear the wonderful repeater within; he was seized with an ardent desire to possess it, on which he suffered himself to dwell till the temptation to secure it at whatever cost was too strong to resist. He had waylaid the unfortunate owner, and with a wooden implement, which he had used in stunning calves that were to be killed, had felled him to the earth in his solitary walk. The watch he instantly secreted, and then with wonderful coolness took part in helping his victim home. At first he hid his treasure in the garden; but he could not then see it often enough to gratify his desire, and he carried it to the hay loft. As time wore away and no suspicion existed, he became bold enough to carry it on his person under his frock, and very soon, as might have been expected, put it out of order,—it ceased to go. In September, the summer assize having

passed, he was bold enough to take it to a tailor, who sometimes mended watches, to be repaired. He represented that he had bought it of his brother John, a gentleman's servant at Leamington. The tailor found the watch of a construction beyond his skill or experience, told him so, adding that it would never answer his purpose, and offered him a common silver watch worth 40s. in exchange, as more likely to be of use to him. This was no very honest proceeding on the tailor's part, and might have brought him into great trouble, for it was accepted; and now the tailor, desirous of getting the watch into a perfect state, repaired with it to a superior watchmaker, the very man to whom the deceased had been in the habit of taking it when it required repair, and who on one occasion had been obliged to send to London for a particular movement to replace that which was out of order, the like to which he had not in his own store. On examination he found this particular piece of work still in the watch. He knew it, and enquired of the tailor how he became possessed of it, and the enquiry led to the apprehension, the examination, and finally the confession of the unhappy lad. A witness who saw him immediately after this, asked him how he felt? "He began to cry," said the witness, and answered, "All that I have to do is to pray to God to forgive me; since I saw Mr. Ford, and made my confession I am much happier," and this, indeed, we may well believe. I have repeated to you this story, as a striking instance how a just Providence sometimes interferes to detect the committer of a great crime. Months had passed away; no clue seemed to exist for tracing out the murderer; no suspicion rested on his head. Probably, the majority who thought about it at all, still believed in the guilt of the two men first apprehended, and blamed the judge for dismissing them. But the watch is brought to the only watchmaker who knew it, and he could not have sworn to it, but that he had placed in it a piece of workmanship, strange to himself, but so remarkable and marked, that he knew it again.

However imperfectly I have executed what I wished, I have detained you much too long. Some apology I hope you will find in the circumstances under which I addressed myself to my task.

Now that I have retired from the occupation of so large a part

of my life, to return in thought to my early years, to turn over note-books long since closed, to bring before my eyes scenes and faces long passed away, naturally refreshes old associations, brightens up old recollections, and awakens thoughts and feelings which had slumbered for years only to start up with greater vigor, and into more sensible tenderness. I cannot but think of that brilliant band whom I found on the circuit when I joined it, or who were soon after enrolled among its members, of whom now very few remain. Three are now upon the bench, and amongst its most exalted and distinguished members. Erskine, a fourth, is living in dignified and useful retirement, respected and loved by all who have the happiness to enjoy his intimacy. Wilde departed after having achieved the highest honors of the profession, and Follett the too early victim of his own great success.

I may be pardoned a few words on each of these distinguished individuals. Wilde was, indeed, a remarkable man; he had an intellect acute even to subtlety; but somewhat wanting in the breadth which a more complete education and more general acquaintance with literature might have given. His reading, indeed, was most limited in kind and quantity; he had industry which nothing could weary, courage which nothing could daunt, perseverance which shrunk from no difficulty. Thus, by nature of a somewhat ungainly figure, and aspect far from prepossessing, with a decided stammer in his articulation, he made himself a very influential speaker; his action was graceful, his declamation very seldom impeded, and his voice by no means disagreeable—always clear in his statement, and close in his reasoning, he sometimes rose with the occasion to a high strain of eloquence. He was complained of as wearisome in the length of his examinations and of his speeches, but this was not because he indulged in useless repetition, but because he saw every point in the case, and would not or was unable to discriminate between the great and the small; he would throw overboard nothing; the verdict was his object, and whether he won it on a bye-point, or on the broad merits, was nearly indifferent to him. When a case took an unexpected turn, he was not quick in changing his front and adopting a new line. In a great case he was seldom free from the appear-

ance of labor and sense of difficulty, and in this respect unfavorably distinguished from Sir J. Scarlett and Follett, who always seemed to move at ease under the heaviest burthens. As an advocate, no one ever more faithfully discharged his duty to his client; compared with this, his own comfort, pleasure, health, weighed nothing; it was difficult for such a man always to deal quite candidly with his opponent; yet I am bound to say that he was a fair and honorable practitioner, whose word might be implicitly relied on. I remember a saying of his, which is worth repeating in any assembly of men engaged in the conflicts of the world, "I never," said he, "despise any opponent, so as to become careless. I never fear any, so as to become unnerved." Respecting sincerely as I do the attorneys as a class, I may yet say it was his misfortune to have practised as an attorney so long as he did; no doubt it conduced in many ways to his early and great success, but it prejudiced him when that success was attained. The difficulties which he had encountered and overcome in early life, left their impress too tightly and closely on his whole nature, when he should have had a more unfettered step, and taken a wider view; and his mind was so intently fixed on details, at the age when our faculties are most expansive and subtle, that he had not afterwards the full power of embracing the entirety of great subjects, which even at the bar was often required of him, and which his station afterwards made indispensable to perfect success, a power which under other circumstances would surely have been found in one who had his strength and grasp of intellect. Let me add, in conclusion, what is even of more importance than all his success in life, that he was a liberal, kind-hearted man, a fast friend, and that when it fell to his lot to dispense patronage, especially in the church, no man made his appointments with less reference to party politics, or a more sincere desire of choosing his objects well.

With Follett I had more familiar relations. I saw his whole course, standing near to it in its commencement, and up to my quitting the bar; I was deeply interested in observing it, and I early predicted his future eminence. No man, I suppose, ever had, or desired to have, success more complete in proportion to the time he was in the

profession; had his health been continued to him, he would have entirely filled up the place at the bar which Sir James Scarlett had left, and I think still leaves, unfilled; he wanted his literature, his science, his variety of legal learning, and his great experience not only in legal practice, but in general life, but he was his equal in the ready appreciation of facts, and in the soundness of his legal principles. He would, I think, have become even a better speaker; for he was equally natural and apparently free from artifice, and yet was more capable of earnest and sustained declamation; his voice was sweet, his actions good. In the conduct of a case he was singularly ingenious, handy, self-possessed, and free from embarrassment, when things took an unexpected turn; he never seemed to labor, never to be negligent or indifferent. The characteristic power of his mind lay in his sound common sense; he disregarded subtle and merely formal distinctions, and seized on the governing facts in every case, and the principle in every decision. He was popular as a junior, and still more so as a leader; his sweetness, and simplicity, and heartiness of manner ensured this—his thoroughly good temper, and when it was needed, his hearty friendliness. No man seemed to grudge him his great success. I once appeared before him as assessor to the Lord Warden, in an important Stannary cause, and saw him as a judge; I believe that, had he lived to preside either in law or equity, he would have earned a reputation not inferior to that of any one who had preceded him. But his frame was never a strong one, and he taxed it beyond the endurance of the strongest. I think the last time I saw him in public was in the House of Lords, in the Sussex Peerage case, when, in remarkable condescension to his infirmities, the seats of the Peers and Judges were brought down near to the bar; behind it a stool was placed, on which he sat during his argument. I say nothing of him as a member of the Lower House; many of you know well what a position he filled there. It is much to be lamented that, neither as a lawyer nor a legislator has he left any lasting monument behind him of his great abilities; the gainful business of the day swallowed him up. Like “a well-graced actor,” the admired one of his day, he lives only in the recollections of one fleeting generation who saw him;

we have a distinct idea of him, as our fathers of Garrick ; henceforward, a mere tradition of him will remain—tradition becoming every year more uncertain, obscure, indiscriminate.

But these are personal recollections in which, perhaps, I have indulged too long, and in which I can scarcely expect to take you along with me. If you will bear with me yet for a few minutes there are two remarks of a more general application which I would gladly make, and which may be worth your consideration. The circuit, to speak generally, is an institution of the country, and surely a most useful one. I speak not now in regard of its primary object, the cheaper and more expeditious administration of justice, but of its effect indirectly on the law—on lawyers, and on judges. Those who administer our common law have unobservedly a considerable influence in the making it, and it has been a common observation—even among eminent legislators—that the greater part of our law is judge made. And it has been said that judge made law is generally the best we have. Now in this the labors of the bar have a greater share than is commonly supposed. Such men as Copley, Scarlett, Campbell, Wilde, or Follett, men jurists in the constitution and habits of their minds, cannot but leave their stamp on the law, and influence the making of what become leading decisions, long before they themselves attain to the bench ; this every well read lawyer knows, and it is surely something therefore that both judges and barristers should periodically leave their books, and the courts of London—should mix familiarly with other men—see other habits—learn the reality of life—its sorrows—its conflicts—face the nature of man, sometimes under its basest and most hideous aspect, but not seldom, believe me, presented in attractive colors, and with an heroic impress on it. Thus it can scarcely be but that their own minds are enlarged—their reasoning powers strengthened—and they themselves acquire a truer wisdom than they could learn from the mere study of treatises or arguments on points of law in Westminster Hall. Nor can the periodical visits of such a body as the judges and the bar be of no effect on the counties through which they pass. I hope I may not be speaking under a too strong professional bias, as I am sure that I am not

with any reference to myself, when I say that these visits work wholesomely upon all classes of the population. It is not merely that even the uneducated see justice administered and the law vindicated in criminal cases in a way which they understand, which interests them very deeply, and by which they are very solemnly impressed. Who that is familiar with a county assize can doubt of this? Let any one mix with the crowd and listen to the remarks which a trial elicits, with the sensible though unlearned criticism on the conduct of the judge and counsel, and he will see that these exhibitions, often noble and solemn, and sometimes, it may be feared, the mournful betrayal of infirmity of temper, or want of feeling, have their wholesome effect. A most acute and eminent judge told me that he was reporting to me a compliment on myself, which I ought to value most highly, from an old market woman—whom he had overheard discussing with her neighbors a trial at Stafford, at which I had presided. She summed up her judgment thus—"I like that judge; he's full of consideration." He told me very truly, and I did prize it most highly. But not only the uneducated, the educated classes in their intercourse with the judges and the bar find themselves thrown into the society of perhaps more sparkling intellect—greater variety of acquirements—and with prejudices at least different from their own. And the result is that their own intellects are stirred, and they are led to more active inquiry, and form perhaps larger views on whatever may be the questions of the day.

But, secondly, to some, at least, of these results, another great—I would almost say *the great institution* of the country—is an essential requisite—the trial by jury, or as it would be more correctly called, the trial by judge and jury. I know that of late years there have not been wanting those who labor to depreciate the jury. Of course I don't affirm that it is a mode of trial perfect in any case, or that it is appropriate for the decision of all questions of fact. I am far from saying that it does not admit of some improvement. But, speaking from long experience, and after much consideration, there is nothing as to which I have a more confident opinion than I have in thinking that to the trial by jury we are

indebted individually and collectively, as members of society, as citizens of the State, in respect of our property, our characters, our safety, our liberties, more than to any other single civil institution which we possess. Of course at times you have a stupid or an obstinate panel, at times you have an absurd or perverse verdict, and depend on it, whenever you have, the story is too good not to be told pretty generally, and of course it loses nothing in the telling, and so the laugh circulates widely. But do you ever consider how small a proportion these bear to the enormous number of untold instances in which sensible juries have decided wisely? Do you suppose that if judges alone decided questions of fact you would never have a mistaken—an unreasonable—an absurd—or even an unrighteous decision? I have been a judge, as you know, for an unusually long period, and I desire freely to record my admiration of the manner in which juries commonly discharge their solemn duties. Again and again have I had reason to marvel at their patience and industry, and attention. Again and again have I heard from a jurymen some question suggested which judge and counsel had both omitted, and the answer to which threw a guiding light upon the whole controversy. Not seldom, when I have at first differed from the verdict, have I found reason, on after reflection, to think that I had been wrong and the judgment of the jury right. But this is not all. We must not lose sight of the indirect advantages of the institution. Again let me speak from experience. The jury is of immense importance as regards the judge. His view of the facts is astonishingly cleared by the necessity of setting it out fully in his summing up to them; and, were he inclined to be careless, or partial, or dishonest, their presence and the responsibility of stating the facts fully to them, and arguing upon them, if he argues at all, *viva voce*, to them are most important preventives. But again, upon our society in general what an element of cultivation and improvement is service on the jury. Let there be no grand juries, no special, no common juries; take away those functions from our gentry, our merchants, our farmers, and our tradesmen, and I venture to say you would take away one of the most important of those things which distinguish us from every other

nation in Europe. This is one and not the least important part of our self-government—it is also a material part of a citizen's education. Any judge will tell you how different a machine the jury becomes after the lessening which a day's trials will have given them; how slowly he must proceed at first, how fully he finds it necessary to sum up the plainest case when he begins the Assize, and how rapidly they learn to appreciate facts and to apply them to legal definitions of offences after a little while. I have often thought that had I to appoint the magistracy of a county I would make it a pre-condition to appointment, that the gentlemen should serve as petty jurymen on the crown side for two assizes at least. I am sure that a more practical knowledge of the criminal law might so be learned than could be acquired by months of careful reading.

Earnestly I hope that in our laudable and natural desire to improve, we may never fancy ourselves so much more wise than our ancestors, that we can dispense with the jury; let us try it in principle and in its details, let us examine it freely and searchingly—only reverently and modestly. Let us improve it if we can where we find it defective, onerous, redundant; let us substitute another mode of deciding the class of cases to which it may be inapplicable, but in its essence and substance let us cherish it as an inestimable treasure, let us guard it as we would our habeas corpus—our bill of rights—our magna charta—sure I am it is not less essential than any one of these to our liberty and well-being, social, civil, and national. One thing is to be always remembered, that stupid verdicts are no argument against the institution, if they do not arise from any fault in it, but from something which you may remedy in jurymen. No institution, however wise in itself, can be expected to work well with inadequate instruments. Improve your jurymen by enlarging and raising your national education. Introduce into your panel all the classes of society by law liable to serve, and when you have done that, and not till then, if it be found to work ill, condemn the institution.

I have now the happiness to have entered, while some portion of my health and strength, bodily and mental, is still spared me, into

that easy, perhaps I should in justice say, that splendid and well endowed retirement, which the wise liberality of the country accords to judges after their years of service completed; but I retain, of course, my old affection for my former profession. I speak under a bias, but I speak under a sense of responsibility, what I believe to be the truth. We live then under a law, which, though far from perfect, is framed in a wise and just spirit, especially as to criminal matters, in that it regards the intention of every act, and makes due allowance for the infirmities of our nature; we live under an administration of the law by judges laboriously educated, honest, fearless, impartial, incorruptible. If I speak thus of them as a body, believe me I am too sensible of my own short-comings to include myself. We can command the services of a learned, able, zealous bar, who will never betray us for love of money, favor of our opponents, or fear of power. Our own peers try our causes—try us ourselves if we should be so unfortunate as to be arraigned on any charge at the bar of justice. What man in his senses dreams that either judge, advocate, or jury, will be other than brave, honest, direct—in a word, just as to intention in disposing of the issue before them? Who can over-rate this blessing? Yet it is so much a matter of course, that we think little of it, as of the sun which shines on us from heaven. Such is human nature. I shall not have spoken so long this evening—you will not have listened so patiently, for nothing, if by what has been said, you shall be roused to a grateful sense of the blessing, and to an earnest resolution, as much as in you lies—to hand it down pure and undiminished to your latest posterity.